

(1992) 09 GAU CK 0003

In the Gauhati High Court

Case No : Income-tax Reference No. 5 of 1986

Commissioner of Income Tax

APPELLANT

Vs

Bijoy Kumar Pandya

RESPONDENT

Date of Decision : 22-09-1992

Acts Referred:

Income Tax Act, 1961 — Section 2(14), 256, 45

Citation : (1993) 115 CTR 380 : (1993) 200 ITR 667

Hon'ble Judges : U.L. Bhat, C.J.; D.N. Baruah, J

Bench : Division Bench

Advocate : D.K. Talukdar, for the Appellant; A.K. Saraf and S. Mitra, for the Respondent

Judgement

U.L. Bhat, C.J.—The Income Tax Appellate Tribunal, Guwahati Bench, Guwahati, has referred the following question to the High Court u/s 256(1) of the Income Tax Act, 1961 (for short "the Act") :

"Whether, on the facts and in the circumstances of the case, the assets being silver utensils sold by the assessee were capital assets within the meaning of Section 2(14) of the Income tax Act, 1961, chargeable to capital gains u/s 45 of the said Act ?"

The assessee was a partner in two commercial firms. The Income Tax Officer assessed him u/s 143(3) of the Act assessing his taxable income at Rs. 63,880 for the assessment year 1978-79. The taxable income has been arrived at after taking into consideration the capital gain of Rs. 41,761 resulting from the sale of silver utensils on two occasions, namely, silver utensils weighing 49.550 Kgs. on October 8, 1977, at Rs. 59,212 and silver utensils weighing 28.2 Kgs. on May 13, 1977, for Rs. 34,827. The Income Tax Officer took the view that the silver utensils were capital assets as defined in Section 2(14) of the Act and are not personal effects exempted in Clause (ii) of Section 2(14) of the Act.

2. The assessee preferred an appeal before the Appellate Assistant Commissioner

of Income Tax, Guwahati Range, Guwahati. The appellate authority held that there was no conclusive proof that the silver utensils were not used as personal effects as and when occasion arises or that they were merely kept as decorative pieces and held that the sale proceeds or any part thereof cannot be treated as capital assets for the purpose of computing the assessable income of the assessee.

3. In an appeal filed by the Revenue, the Tribunal, after carefully examining the various decisions relied on by the parties as also the materials on record and the facts and circumstances of the case, held that the Appellate Assistant Commissioner was correct in coming to the conclusion that the silver utensils were personal effects held for personal use of the assessee and members of his family and as such did not constitute capital assets as defined in Section 2(14) of the Act. Being dissatisfied with the order, the Revenue moved the Tribunal for reference and reference has been made.

4. According to learned counsel, Shri Talukdar appearing for the Revenue, the Appellate Assistant Commissioner and the Tribunal have not considered the material on record in the proper perspective, their findings in favour of the assessee are erroneous, the silver utensils held by the assessee cannot be said to be personal effects, therefore, they must be regarded as capital assets as defined in Section 2(14) of the Act. The answer of learned counsel, Shri Saraf, for the assessee is two-fold. He contends that the questions whether the Tribunal has committed any error in its findings or whether the Tribunal has not properly considered the materials before arriving at a finding, whether the finding of the Tribunal that the silver utensils in this case fall within the category of personal effects exempted u/s 2(14) of the Act, have not been referred to this court u/s 256(1) of the Act and, therefore, this court could not go into those questions. Learned counsel also contends that on the materials before this court, it has to be held that the silver utensils are not capital assets as defined.

5. The relevant portions of Section 2(14) of the Act, read thus-

" "capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include-

(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession ;

(ii) personal effects, that is to say, movable property (including wearing apparel and furniture, but excluding jewellery) held for personal use by the assessee or any member of his family dependent on him.

Explanation.--For the purposes of this sub-clause, "jewellery" includes-

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel ;

(b) precious or semi-precious stones, whether or not set in any furniture, utensil, or other article or worked or sewn into any wearing apparel ; . . ."

Property of any kind held by an assessee is capital asset unless it falls within one of the exceptions in Clauses (i) to (v). The exception relevant to this case is the one in Clause (ii) according to which personal effects are not capital assets. Personal effects are those movable properties (including wearing apparel and furniture, but excluding jewellery) held for personal use by the assessee or any member of his family dependent on him.

Silver utensils are undoubtedly movable properties. The question of fact which arose before the statutory authorities was whether these utensils were held for personal use by the assessee or any member of his family dependent on him. The Income Tax Officer held against the assessee while the Appellate Assistant Commissioner and the Tribunal held in favour of the assessee. On the finding that these utensils are personal effects, that is, effects held for personal use by the assessee or any member of his family dependent on him, the necessary corollary is that those utensils are not capital assets for the purpose of Section 2(14) of the Act.

6. The question substantially argued before us by learned counsel for the Revenue is that the Tribunal committed an error in finding that the silver utensils are personal effects, that is, held for personal use by the assessee. The question referred is not whether the Tribunal in the facts and circumstances of the case was justified or committed an error in finding that these silver utensils were personal effects. On the other hand, the question referred is whether on the facts and circumstances of the case these silver utensils were capital assets within the meaning of Section 2(14).

7. In this connection our attention is invited to two decisions in *Karnani Properties Ltd. Vs. The Commissioner of Income Tax, West Bengal*, and *Commissioner of Income Tax Vs. Smt. Ammini Varoo*, The former is a decision of the Supreme Court rendered by a Bench consisting of Hegde J. and Grover J. The question referred in that case was whether the Tribunal was justified in arriving at a particular finding of fact. It was argued that the High Court after reassessing the evidence on record had taken a particular view. The High Court had taken the view that the statutory authorities had not properly construed certain documents or appreciated the evidence on record. Dealing with this aspect of the case, the Supreme Court observed (at page 554 of 82 ITR) :

"... The question as to the correctness of the facts found by the Tribunal was not before the High Court nor is it before us. When the question referred to the High Court speaks of "on the facts and in the circumstances of the case", it means on the facts and circumstances found by the Tribunal and not about the facts and circumstances that may be found by the High Court. We have earlier referred to the facts found and the circumstances relied on by the Tribunal, the final fact finding authority. It is for the Tribunal to find facts and it is for the High Court

and this court to lay down the law applicable to the facts found. Neither the High Court nor this court has jurisdiction to go behind or to question the statements of fact made by the Tribunal. The statement of the case is binding on the parties and they are not entitled to go behind the facts found by the Tribunal in the statement."

The second decision referred to above is a decision of a Division Bench of the Kerala High Court. The judgment was delivered by Thommen J. (as he then was). The question referred to the High Court in this case was whether under the facts and circumstances of the case, silver vessels would fall within the mischief of "personal effects". The Tribunal, after referring to the arguments advanced on behalf of the assessee to the effect that the articles could be used daily but because of their considerable value they were not put to daily use to avoid the danger of being lost, that the assessee had on various occasions used the articles, and referring to the description of the articles, namely, dinner plates, half plates, quarter plates, finger bowls, glasses, jugs, etc., arrived at the finding that the assessee had been putting them to use on such occasions where they could be put to use with advantage and accordingly held that they were personal effects. This finding was sought to be challenged in the High Court. The High Court observed (at page 60) :

"... On what evidence the Tribunal came to that conclusion, we do not know. Whether the Tribunal was justified in drawing that inference merely because the assessee's representative stated so, and whether that finding was perverse for want of reasonably acceptable evidence is a matter on which we cannot express any view in the absence of a specific challenge. In the circumstances, the question must necessarily be answered, as we do, in the affirmative, that is, against the Revenue and in favour of the assessee. "

The court took the view that if the challenge is against the finding of the Tribunal on the basis that it was unjustified or perverse or not based on reasonably acceptable evidence that must be the subject-matter of reference and in the absence of such challenge the particular question referred, namely, whether the articles in question are capital assets must necessarily be answered in favour of the assessee, based on the finding of the Tribunal that they are personal effects.

8. Similar is the state of affairs in the present case. The Tribunal referred to the arguments advanced on behalf of the assessee to the effect that the detailed list of utensils would show that they were capable of being used as utensils because these constituted a complete dinner set, that the numbers of each item of utensils are also compatible with the assessee's claim of its being used by the assessee, members of his family and guests and that analysis of the facts of the case would go to show that the articles were held by the assessee for personal use. On considering these arguments, the Tribunal came to the conclusion that the Appellate Assistant Commissioner was justified in holding that the articles were personal effects held for the use of the assessee and the members of his family. We notice that this particular finding is not the subject-matter of any

specific challenge in the question referred to the High Court. The detailed list of utensils referred to in the order of the Tribunal is not before us. Even accepting that there could be another view possible on the materials before the Tribunal, the finding of the Tribunal as such not being under challenge in the question referred to the High Court, we do not think we can go into that question. This court must proceed on the basis that the finding of the Tribunal that these articles are personal effects held by the assessee for personal use by the assessee and the members of his family stands and if that finding stands, necessarily, the articles cannot be regarded as capital assets within the meaning of Section 2(14) of the Act and the answer must be in favour of the assessee.

9. In the result, we answer the question in the negative, that is, in favour of the assessee and against the Revenue. We direct the parties to bear their respective cost in this reference case.

10. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Guwahati Bench, Guwahati.